

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TERRANCE DEWAN MORTON, SR.,
Plaintiff(s),

vs.

CVS CORPORATION,
Defendant(s).

Case No. 2:15-cv-02417-APG-NJK

ORDER

Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a complaint on December 18, 2015. Docket No. 1-1. This proceeding was referred to the undersigned by Local Rule IB 1-9.

I. In Forma Pauperis Application

Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Docket No. 1. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to § 1915. Federal courts are given the authority to dismiss a case if the action

1 is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When
3 a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
4 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
5 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d
6 1103, 1106 (9th Cir. 1995).

7 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
8 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
9 essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d
10 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the
11 claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v.*
12 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
13 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
14 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286
15 (1986)). The court must accept as true all well-pled factual allegations contained in the complaint,
16 but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals
17 of the elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at
18 678. Secondly, where the claims in the complaint have not crossed the line from plausible to
19 conceivable, the complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro*
20 *se* complaint are held to less stringent standards than formal pleading drafted by lawyers. *Hebbe v.*
21 *Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings
22 is required after *Twombly* and *Iqbal*).

23 In addition, the Court has a duty to ensure that it has subject matter jurisdiction over the
24 dispute before it. *See, e.g.*, Fed. R. Civ. P. 12(h)(3). Federal courts are courts of limited jurisdiction
25 and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S.
26 466, 489 (2004). Pursuant to 28 U.S.C. § 1331, federal courts have original jurisdiction over “all
27 civil actions arising under the Constitution, laws, or treaties of the United States.” Cases “arise
28 under” federal law either when federal law creates the cause of action or where the vindication of

1 a right under state law necessarily turns on the construction of federal law. *Republican Party of*
2 *Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction
3 exists is based on the “well-pleaded complaint rule,” which provides that “federal jurisdiction exists
4 only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
5 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

6 The Court also has jurisdiction over civil cases in which there is diversity among the parties.
7 “Jurisdiction founded on 28 U.S.C. § 1332 requires that the parties be in complete diversity and the
8 amount in controversy exceed \$75,000.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089,
9 1090 (9th Cir. 2003). To establish diversity, the plaintiff must be a citizen of a different state than
10 the defendant. *See Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1095 (9th Cir. 2004).

11 The Court may also dismiss a complaint at the screening phase when this District is not the
12 proper venue for the suit. *See, e.g., Greene v. Logisticare Solutions, LLC*, 2015 WL 4162511 (D.
13 Nev. July 8, 2015) (adopting report and recommendation dismissing claim as filed in the wrong
14 venue). There are generally three situations in which venue is proper. First, if all defendants are
15 residents of the state in which the district is located, venue is proper in a district in which any
16 defendant resides. 28 U.S.C. § 1391(b)(1). Alternatively, venue is proper in a district in which a
17 “substantial part of the events or omissions” giving rise to the claim occurred, or in which a
18 “substantial part of property” that is the subject of the action is situated. 28 U.S.C. § 1391(b)(2).
19 Finally, if there is no district in which venue proper based on residence or location of events or
20 omissions, venue is proper where any defendant is subject to the court’s personal jurisdiction. 28
21 U.S.C. § 1391(b)(3).

22 **A. Subject Matter Jurisdiction**

23 Plaintiff’s complaint is defective in that it fails to allege subject matter jurisdiction. As noted
24 above, federal question jurisdiction exists when a claim is premised on federal law. In this case, it
25 is not clear what claims Plaintiff is attempting to bring. The complaint mentions “personal injury,”
26 a type of claim commonly arising out of state law. The complaint also mentions “violation of civil
27 rights,” but fails to identify the statute or legal authority under which such claim arises. To the
28 extent Plaintiff is seeking to bring a claim for alleged civil rights violations under 42 U.S.C. § 1983,

1 such a claim requires conduct by a defendant acting under color of law. *West v. Atkins*, 487 U.S. 42,
 2 48 (1988). Defendant in this case is a drug store, so it appears unlikely that Plaintiff is seeking to
 3 bring a claim based on some sort of state action. As such, the complaint fails to sufficiently allege
 4 federal question subject matter jurisdiction.

5 The complaint also fails to sufficiently allege diversity jurisdiction. Plaintiff appears to be
 6 seeking \$54,000,000, but has failed to allege facts showing that there is diversity among the parties
 7 as required to invoke the Court's diversity jurisdiction. *See Allstate Insurance*, 358 F.3d at 1095.

8 Accordingly, the complaint fails to establish subject matter jurisdiction.

9 **B. Venue**

10 As noted above, the Court also screens complaints under § 1915 to ensure this is the proper
 11 venue for the case. The complaint fails to provide basic information, such as the location of the
 12 underlying events, sufficient for the Court to evaluate whether venue is proper. Accordingly, the
 13 complaint fails to establish that this is a proper venue for this case.

14 **C. Failure to State a Claim**

15 As noted above, it is not clear what particular causes of action Plaintiff is attempting to
 16 pursue in this case. The Court gleans that some sort of "incident" has allegedly occurred, but
 17 otherwise can discern no facts related to that incident on which Plaintiff's claims are based.
 18 Accordingly, the complaint fails to state a claim for which relief can be granted.

19 **III. Conclusion**

20 Accordingly, **IT IS ORDERED** that:

- 21 1. Plaintiff's request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not
 22 be required to pay the filing fee of four hundred dollars (\$400.00).
- 23 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
 24 prepayment of any additional fees or costs or the giving of a security therefor. This
 25 Order granting leave to proceed *in forma pauperis* shall not extend to the issuance
 26 and/or service of subpoenas at government expense.
- 27 3. The Clerk of the Court shall file the Complaint.

Dated: January 27, 2016

NANCY J. KOPPE
United States Magistrate Judge